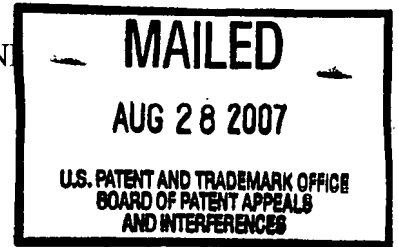


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte : CARLOS ORLANDO VILACHA ZANONI
and KLAUS UHLIG PETERSSEN

Application No. 09/745,098



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on August 22, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

Summary Of Claimed Subject Matter

Appellant filed an Appeal Brief dated July 11, 2005, in response to the Final Rejection mailed March 24, 2005. The Appeal Brief is not in compliance with the new rules of 37 CFR 41.37(c) effective September 13, 2004.

37 CFR 41.37(c) states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

* * *

(c)(1) The brief shall contain the following items...of this section:

(v) ***Summary Of Claimed Subject Matter.*** A concise statement of each ground of rejection presented for review.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief . The Appeal Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claims argued separately, every means plus functions and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with references to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

37 CFR 41.37(c)(1)(ix), which is identified in the new rules as:

(ix) ***Evidence appendix.*** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

and

37 CFR 41.37(c)(1)(x), which is identified in the rules as:

(x) ***Related proceedings appendix.*** An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or with any appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of the appeal.

Section 37 CFR 41.37(c) further states:

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

Appellant is required to submit a Paper addressing the deficiencies in the Appeal Brief, specifically, an amended Summary of Claimed Invention, Evidence Appendix and Related Proceedings Appendix

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the examiner for:

- 1) hold the Appeal Brief filed July 11, 2005, defective;
- 2) notify the Appellant to submit a "paper" which corrects the Appeal Brief as identified above;
- 3) issue and mail a PTOL-90, to acknowledge and considered any "paper" filed by appellant correcting the Appeal Brief, and
- 4) for such further action as appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



PATRICK J. NOLAN
DEPUTY CHIEF APPEALS ADMINISTRATOR
(571) 272-9797

PJN/dpv

David C. Jenkins
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219